

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

CRIMINAL NO. 02-10029-RWZ

UNITED STATES OF AMERICA

v.

DAVID MacKINNON

ORDER
October 26, 2007

ZOBEL, D.J.

David MacKinnon has moved to dismiss the Indictment filed against him in January 2002 and to “vacate the charges and proceedings related thereto.” The “charges” are contained in one count that alleges possession with intent to distribute at least 5 grams of crack cocaine. The current motion challenges the court’s jurisdiction to entertain the original criminal proceedings on a number of convoluted and not easily comprehensible grounds. Because none are legally viable, the motion is denied sua sponte.

I note that the case was fully and extensively litigated by competent and conscientious counsel. In the course of the proceedings which ultimately led to a conditional plea of guilty, Mr. MacKinnon had unsuccessfully sought dismissal of the portion of the indictment which alleged an amount of crack cocaine exceeding 5 grams. Because defendant had a lengthy criminal record and because the government filed a notice under 21 U.S.C. §851, he was sentenced to a term of imprisonment of 262

months. He appealed, the Supreme Court decided United States v. Booker, 543 U.S. 220 (2005), and the Court of Appeals remanded for resentencing. This court then imposed a sentence of imprisonment of 180 months.

In August 2006, defendant, acting pro se, moved for vacation of sentence pursuant to 28 U.S.C. §2255, MacKinnon v. United States, Civil Action No. 06-11411-RWZ. The petition was dismissed by this court which then denied petitioner's request for a certificate of appealability. The Court of Appeals also declined to issue the certificate of appealability, and it terminated the appeal in May 2007.

Petitioner, again acting pro se, file the instant motion on October 23, 2007. It is denied.

October 26, 2007
DATE

/s/Rya W. Zobel
RYA W. ZOBEL
UNITED STATES DISTRICT JUDGE